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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE NATIONAL SECURITY AGENCY
TELECOMMUNICATIONS RECORDS
LITIGATION

This Document Relates Solely To:

Shubert et al. v. United States of America et al.
(Case No. 07-cv-00693-VRW)

No. M:06-cv-01791-VRW

**THIRD STIPULATION TO EXTEND
TIME TO RENEW MOTION TO
DISMISS AND FOR SUMMARY
JUDGMENT**

STIPULATION AND ORDER

Courtroom: 6, 17th Floor
Chief Judge Vaughn R. Walker

1 Pursuant to Local Rule 6-2, the parties hereby stipulate to a further extension of time for
2 the Government Defendants to renew their motion to dismiss and for summary judgment, and to
3 adjust the briefing schedule on that motion accordingly, but not the scheduled hearing date.

4 **RECITALS**

5 1. On September 10, 2009, the parties agreed to and the Court adopted a briefing
6 schedule for Government Defendants to renew their dispositive motion based on the
7 Government's assertion of the state secrets privilege. (Dkt. 31).

8 2. On October 21, 2009, the Court approved a second stipulation requested by the
9 Government to modify the briefing schedule. According to that stipulation, the Government's
10 renewed motion is presently due on October 27, 2009; plaintiffs' opposition to that motion is due
11 December 2, 2009; and the Government Defendants' reply is due on December 8, 2009. The
12 hearing on the Government Defendants' motion remains scheduled for December 15, 2009.
13 (Dkt. 35).

14 3. As described in the Government's second stipulation, the Government
15 Defendants' renewed motion may be accompanied by a new assertion of the state secrets
16 privilege by the current Director of National Intelligence. The Attorney General of the United
17 States has issued a revised policy pertaining to the review of agency requests to invoke the state
18 secrets privilege in litigation, and this recent policy applies to the potential assertion of the
19 privilege in this case. Under the policy, a proposed invocation of the state secrets privilege in
20 litigation requires several stages of review, including ultimately by the Attorney General.

21 4. The Government anticipated completing this review by October 27, 2009, as
22 described in the second stipulation. The undersigned counsel for the Government was informed
23 on October 26, 2009, that senior Department of Justice officials undertaking review of the matter
24 pursuant to the new policy require three (3) additional days to complete that process. The
25 Government therefore requests three (3) additional days to complete those deliberations,
26 including any review by the Attorney General.

27 5. The Government will not seek any further extensions of the briefing schedule.
28 Plaintiffs' stipulation to this schedule is conditioned upon the Government's representation that it

will not seek any further extensions of time to file its renewed motion.

6. Accordingly, the parties have stipulated and agreed to, and seek the Court's approval of, a revised briefing schedule under which the Government Defendants' renewed dispositive motion would now be due no later than October 30, 2009, and plaintiffs' opposition to that motion would be due no later than December 4, 2009. The Government Defendants' reply would be due on December 8, 2009, as previously scheduled by the Court.

7. The parties propose no change in the currently scheduled date for the hearing on the Government Defendants' motion (December 15, 2009). A proposed order is attached.

STIPULATION

Pursuant to Local Rule 6-2, the parties hereby stipulate that: the Government Defendants' renewed dispositive motion would now be due no later than October 30, 2009, and the plaintiffs' opposition to that motion would be due no later than December 4, 2009. The Government Defendants' reply in support of the motion would be due no later than December 8, 2009, as previously scheduled by the Court. The hearing on the Government Defendants' motion would remain as previously scheduled by the Court on December 15, 2009, at 10 a.m.

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2 **~~PROPOSED~~ ORDER**

3 Pursuant to the foregoing stipulation to extend time to renew motion to dismiss and for
4 summary judgment and good cause appearing, it is hereby ORDERED that:

5 1. The Government Defendants' renewed motion to dismiss and for summary
6 judgment shall be filed no later than October 30, 2009.

7 2. The Plaintiffs' opposition to that motion shall be filed no later than December 4,
8 2009.

9 3. The Government Defendants' reply in support of the motion shall be filed no later
10 than December 8, 2009.

11 4. A hearing on the Government Defendants' motion shall be conducted on
12 December 15, 2009, at 10:00 a.m.

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14 IT IS SO ORDERED.

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17 The Honorable Vaughn R. Walker
18 United States District Chief Judge
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